

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

L.J. ZUCCA, INC.,

Plaintiff,

v.

ALLEN BROS. WHOLESALE
DISTRIBUTORS INC. *et al.*,

Defendants.

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C.A. No. 1:07-CV-2 (MPT)

RULE 5.1 NOTICE OF CONSTITUTIONAL QUESTION

PLEASE TAKE NOTICE that, in accordance with Rule 5.1(a) of the Federal Rules of Civil Procedure, Defendant Cooper-Booth Wholesale Company has filed a Motion for Partial Judgment on the Pleadings raising the following constitutional question under the Supremacy Clause in Article VI of the United States Constitution: Whether Section 1 of the Sherman Act, 15 U.S.C. § 1, preempts the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608.

In accordance with Rule 5.1(a)(2), Defendant Cooper-Booth Wholesale Company is contemporaneously herewith serving upon the Attorney General of the State of Delaware, by certified mail, a copy of the following:

- (1) Defendant Cooper-Booth Wholesale Company's Rule 5.1. Notice of Constitutional Question;
- (2) Defendant Cooper-Booth Wholesale Company's Motion for Partial Judgment on the Pleadings (D.I. 12);
- (3) Defendant Cooper-Booth Wholesale Company's Brief in Support of Motion for Partial Judgment on the Pleadings (D.I. 11);
- (4) Plaintiff L.J. Zucca, Inc.'s Opposition to Cooper-Booth Wholesale Company's Motion for Partial Judgment on the Pleadings (D.I. 25);


- (5) Defendant Cooper-Booth Wholesale Company's Reply Brief in Support of Motion for Partial Judgment on the Pleadings (D.I. 26).

Pursuant to Rule 5.1(c), unless the Court sets a later time, the Attorney General may intervene within 60 days after the notice of constitutional question is filed or after the Court certifies the challenge, whichever is earlier.

Respectfully submitted,

BLANK ROME LLP

Dated: March 20, 2007



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Attorneys for Defendant
Cooper-Booth Wholesale Company

CERTIFICATE OF SERVICE

I, David K. Sheppard, Esquire, hereby certify that on March 20, 2007, I electronically served a copy of the **RULE 5.1 NOTICE OF CONSTITUTIONAL QUESTION** on the following counsel of record:

Michael F. Bonkowski, Esquire
Kimberly M. Large, Esquire
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/s/ David K. Sheppard

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